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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/788,786	02/27/2004	Gary Pritchard	PRIT.01USU1	6158

7590 06/29/2004  
The Law Offices of William W. Cochran, LLC  
Suite 230  
3555 Stanford Road  
Fort Collins, CO 80525

EXAMINER
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FULTON, CHRISTOPHER W

ART UNIT	PAPER NUMBER
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2859

DATE MAILED: 06/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/788,786

Applicant(s)

PRITCHARD, GARY

Examiner

Christopher W. Fulton

Art Unit

2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14-25 is/are allowed.
- 6) ☒ Claim(s) 1-13 and 26-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/27/04</u> . | 6) <input type="checkbox"/> Other: ____.  |

DETAILED ACTION

*Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 4, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Umbro.

The device as claimed is disclosed by Umbro with a length of tape 15 having at least one hole 17 along said length, a line 20 attached to the free end of the length of tape and disposed along the length of tape such that at least a portion of the line spans the hole, and a marking medium with a chalk medium attached top the line.

*Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3, 5, 6, 11-13, 26-30, and 34-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Umbro in view of Lindenau.

The device and method as claimed is disclosed by Umbro as stated in the rejection recited above for claims 1, 2, 4, and 10, but lacks indicia on the tape, a tape reel for holding the tape when not in use, a spring retraction mechanism for the tape to retract the tape when not in use, a tape compartment and a separate line compartment, and with respect to claims 11 and 36 the marking media being ink.

Lindenau teaches a combination tape with indicia and line with chalk both of which are mounted on spring loaded reels and are located in separate housings to separate the chalk from the tape. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include indicia on the tape of Umbro as taught by Lindenau to provide a measuring feature along with the chalking feature of the device. In addition, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the tape of Umbro flexible to mount on a spring loaded reel in a housing as taught by Lindenau to better store the tape when not in use and therefore make the device more compact during storage. Furthermore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to house the reel for the line in a separate compartment from the reel for the tape in Umbro as taught by Lindenau to limit the contact between the tape and the chalk.

It is old and well known to use ink as a marking media with line markers. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the chalk of the combination of Umbro and Lindenau with ink as an old and well known marking media alternative in line markers.

5. Claims 7 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Umbro in view of Lindenau as applied to claims 3, 5, 6, 11-13, 26-30, and 34-36 above, and further in view of Blackman.

The device as claimed is disclosed by the combination of Umbro and Lindenau as stated in the rejection recited above for claims 3, 5, 6, 11-13, 26-30, and 34-36, but lack a lock mechanism for the tape.

Blackman teaches using a lock mechanism to fix an extendable tape in place at a desired location during use of the device. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add a lock mechanism to the combination of Umbro and Lindenau as taught by Blackman to hold the tape in a desired extended position during use of the device.

6. Claims 8, 9, 32, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Umbro in view of Lindenau as applied to claims 3, 5, 6, 11-13, 26-30, and 34-36 above, and further in view of Giffin.

The device as claimed is disclosed by the combination of Umbro and Lindenau as stated in the rejection recited above for claims 3, 5, 6, 11-13, 26-30, and 34-36, but lack a crank handle to retract the line and tape.

Giffin teaches using a crank to retract a line and tape when the user is finished with the device. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add a crank to the combination of Umbro and Lindenau as taught by Giffin to retract the line and tape into the housing when the user is finished using the device.

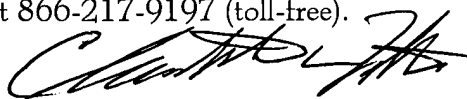
*Allowable Subject Matter*

7. Claims 14-25 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher W. Fulton whose telephone number is (571) 272-2242. The examiner can normally be reached on M-W & F 6:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher W. Fulton  
Primary Examiner  
Art Unit 2859

CWF